

FILED

United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

January 8, 2013

Elisabeth A. Shumaker  
Clerk of Court

In re:

MAURECE KAVEL,

Movant.

No. 12-2206  
(D.C. No. 1:10-CV-01036-JCH-FLG)  
(D. N.M.)

ORDER

Before **O'BRIEN**, and **HOLMES**, and **MURPHY**, Circuit Judges.

Maurece Kavel, proceeding pro se, moves for authorization to file a second or successive 28 U.S.C. § 2254 petition. We deny the motion.

In 2003, Mr. Kavel pled no contest to four counts of forgery in New Mexico state court. After twice violating probation, he was ordered to serve the remainder of his 12-year sentence.

He has so far filed three petitions in the United States District Court for the District of New Mexico seeking relief under 28 U.S.C. § 2254 from his forgery convictions. Each petition was dismissed. He appealed each of the dismissals, and in each case this court denied him a certificate of appealability (COA) and dismissed his appeal. *Kavel v. Marshall*, 418 F. App'x 687 (10th Cir.), *cert. denied*, 132 S. Ct. 220 (2011); *Kavel v. Romero*, 387 F. App'x 846 (10th Cir. 2010); *Kavel v. Tapia*, 276 F. App'x 853 (10th Cir. 2008). In his most recent appeal, this court upheld the district court's determination that it lacked jurisdiction because this court had not

granted Mr. Kavel authorization to file a second or successive petition. 418 F. App'x at 688.

In his present motion for authorization and accompanying proposed petition, Mr. Kavel indicates that he wishes to raise a single issue: whether he was “[i]ncompetent to stand trial or enter a plea.” Mot. For Authorization, at 8. This issue is identical to an issue he previously raised in his first and second § 2254 petitions. *See Kavel*, 387 F. App'x at 847 (noting claim raised in second petition and on appeal that Mr. Kavel was “incompetent to enter into the original plea agreement in 2003”); *Kavel v. Tapia*, No. 07-cv-508, doc. 9 at 3 (magistrate’s report and recommendation) (noting claim that Mr. Kavel “was incompetent to stand trial or plead”). Moreover, Mr. Kavel admits he raised the claim “in a prior federal petition, application, or motion.” Mot. For Authorization, at 9.<sup>1</sup>

“A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.” 28 U.S.C. § 2244(b)(1). Mr. Kavel has raised the claim he now wishes to present in two prior habeas applications. We therefore deny him authorization to file a second or successive petition. This denial of authorization “shall not be appealable and shall

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<sup>1</sup> Mr. Kavel asserts that his claim is based on newly discovered evidence: an incompetency report that his public defender allegedly withheld at his forensic psychological evaluation in 2003. We do not read his application as asserting a claim for ineffective assistance of counsel.

not be the subject of a petition for rehearing or for a writ of certiorari.” 28 U.S.C.

§ 2244(b)(3)(E).

Entered for the Court

A handwritten signature in black ink, reading "Elisabeth A. Shumaker", written over a light blue dotted line.

ELISABETH A. SHUMAKER, Clerk